(2) Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT of the UNITED STATES

October Term, _____

Thomas B. Ferguson,
Petitioner

vs.

Phyllis F. Haney,
Respondent

On Petition for a Writ of Certiorari
To the Third Circuit Court of Appeals

SUPPLEMENTARY APPENDIX

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SUPPLEMENTARY APPENDIX

APPENDIX A	MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA OFMAY 16, 20000
APPENDIX B	ORDER OF THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING THE PETITION FOR REHEARING AND THE MOTION FOR ORAL ARGUMENT OF MAY 11, 2001.

IN THE UNITED STATS DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS B. FERGUSON	)	
	)	
Plaintiff	)	
v.	)	Civil Action No. 98-1223
	)	
PHYLLIS F. HANEY	)	
	)	
Defendant	)	

MEMORANDUM ORDER

I

In this civil action, plaintiff, Thomas B. Ferguson, assets a cause of action for undue influence against d4efendant, Phyllis F. Haney. Plaintiff requests the following: (1) a decree rendering several deeds that transferred interests in real property from Helen Margaret Ferguson (Ms. Ferguson), the mother of the parties, to defendant "null and void and of no effect;" (2) an injunction preventing defendant from transferring "to third parties ... any of the property, or disposing in any fashion of the estate described in [the] deeds, or in any manner encumbering the same;" (3) an order directing defendant to pay plaintiff any consideration received in exchange for any transfer of plaintiff's "legitimate interest in any portion of the property;" and (4) an accounting for any rents and income received in connection with the property.[1] (Amended

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[1] Plaintiff also requests court costs.

Plaintiff also states that "[b]ecause Defendant Haney induced [Ms. Ferguson] to give her cash, checks, accounts and other good and valuable property by means of undue influence,

Comp. At 9-10). Presently, before the court is defendant's motion for summary judgement, whereby defendant moves for dismissal of plaintiff's amended complaint because plaintiff has lost standing to assert his claims.

II

The following facts are undisputed:

In 1988 and 1993, Ms. Ferguson executed deeds that transferred interests in real property located in Chippewa Township, Beaver County, Pennsylvania to defendant. On March 15, 1998, Ms. Ferguson died.

On August 31, 1998, the last will of Ms. Ferguson was admitted to probate by the decree of Carol Ruckert Fiorucci, Register of Wills of Beaver County, Pennsylvania. The second paragraph of Ms. Ferguson's will provides as follows:

> I give, devise and bequeath all the rest, residue and remainder of my estate, real, personal and mixed, of whatsoever nature of kind and wheresoever the same may be situate to my daughter, PHYLLIS F. HANEY, if she survives me.[2]

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with the intent to defraud Plaintiff, Plaintiff now claims all such sums and property as the fruit of the aforesaid acts." (Amended Comp. at 10). However, as the court noted in its Memorandum Order dated February 9, 2000, plaintiff abandoned any claim for relief premised upon the allegations set forth in that statement. (Memorandum Order at 1 n.1).

[2] By reference to the first paragraph of Ms. Ferguson's last will, "the rest, residue and remainder of [her] estate" is comprised of the property of Ms. Ferguson that remains after

(D. Ex.2). Plaintiff is not designated as a beneficiary under the will.

No one has appealed the probate decree.

III

A

Defendant indicates that dismissal of plaintiff's claim is proper on the ground that plaintiff once had but no longer has standing to assert his claim. Although defendant's motion is couched in terms of standing, the essence of defendant's argument is that plaintiff's claim is moot because of events that have occurred subsequent to the filing of plaintiff's complaint. (See Br. At 10-11).

The court will discuss standing and mootness because the concepts are closely related. However, the court will consider defendant's argument as premises upon the mootness of plaintiff's claim.

B

Article III of the United States Constitution limits the jurisdiction of federal courts to cases and controversies, and "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). "[T]he irreducible constitutional minimum of standing contains three elements[:]" (1) the plaintiff must

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debts, funeral expenses, medical expenses and taxes are paid. (D. Ex.2). In the event that defendant would have predeceased Ms. Ferguson, two of Ms. Ferguson's grandchildren were to take "the rest, residue and remainder of [Ms. Ferguson's] estate." Id.

have suffered an injury-in-fact that is concrete and particularized, as well a actual or imminent; (2) the plaintiff's injury-in-fact must have been caused by, or be fairly traceable to, the complained of conduct; and (3) it must be likely that a favorable court decision will redress the plaintiff's injury. Lujan, 504 U.S. at 560.

Mootness is also an "essential and unchanging part" of the Article III case-or-controversy requirement. Ruocchio v. United Trasp. Union, Local 60, 181 F.3d 376, 385 n.11 (3d Cir. 1999) (citation omitted). Mootness and standing are related concepts; indeed, "[m]ootness has been described as representing 'a time dimension of standing requiring that the interests originally sufficient to confer standing persist throughout the suit.'" Ruocchio, 1818 F.3d at 385 n.11 (citation omitted).

Mootness "asks whether a party who has established standing has now lost it because the facts of her case have changed over time." Artway v. Attorney Gen. Of State of New Jersey, 81 F.3d 1235, 1246 (3d Cir. 1996). "'[T]he central question in mootness inquiries is whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." Artway, 81 F.3d at 1246 (citations omitted). In other words, the central question in mootness inquiries is "whether the decision of the dispute continues to be justified by sufficient prospect that it will have impact on the parties." Ruocchio, 181 F.3d at 383 (citation omitted).

Defendant concedes that plaintiff had standing to assert his claim when he filed his complaint on July 16, 1998. (Br. At 11). However, defendant asserts that events occurring subsequent to the filing of plaintiff's complaint have resulted in the mootness of plaintiff's claim.

Specifically, defendant "has no current remedy" and "can no longer benefit from this suit" because plaintiff has not and cannot successfully contest the admission of Ms. Ferguson's will to probate, a will pursuant to the terms of which defendant, as sole primary beneficiary, has obtained, independent of the deeds, a legally cognizable right to all of the property that is subject to plaintiff's claim.

It is not disputed that the decree admitting Ms. Ferguson's will to probate has not been appealed. It is clear that, under Pennsylvania law, the one-year statute of limitations period for an individual timely to appeal the register's probate decree has run. 20 Pa. C.S.A. §908(a) (stating that "[a]ny party in interest who is aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree ...").

An exception to the one-year statute of limitations exists under Pennsylvania case law. The exception, a narrow one, permits an otherwise untimely appeal of a register's decree admitting a will to probate "only ... where there has been a fraud on the court or the Register of Wills." Dempsey v. Figura, 374 Pa. Super. 347, 351, 542 A.2d 1388, 1390-91 (1988) (citations omitted).

Plaintiff, aware that the decree admitting Ms. Ferguson's will to probate was not timely appealed, attempts to invoke the narrow exception and raise the specter of an appeal of the decree. Plaintiff states as follows:

> Defendant, in her Brief, has made the mysterious statement that the Plaintiff "can never be made whole." Defendant appears at this point to contemplate a confession that the

> deeds in question were executed through the working of a fraud and the operation of undue influence on the grantor. Such a confession would not insure a victory in a state court. The implicit admission of a fraud worked on the court is lethal to this argument. Any probate order can be opened if a fraud has been worked on the court. An admission that Defendant's hands were unclean and/or that she swore falsely in her answer would not assure her of victory in a probate court.

(Dismissal Br. At 4) (emphasis in original).[3]

Plaintiff's attempt fails for several reasons. First, defendant has argued that the narrow exception is available only in cases involving forgery and that, even if exception were otherwise available, the statute of limitations would not be tolled because plaintiff knew or should have known of any actionable fraudulent conduct. Plaintiff does not oppose either argument. Second, plaintiff completely misunderstands defendant's position. Nowhere does defendant suggest that she is admitting to conduct that she previously denied in her answer. Instead, defendant is assuming, for purposes of her motion, that plaintiff will prevail on the merits of his claim. Third, even if defendant were admitting to conduct that she previously denied in her answer, plaintiff has failed to explain how this "admission" would amount to fraud on the court or how this "fraud" is relevant to a register's decree admitting a will to probate.

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[3] Plaintiff incorporates in his arguments in opposition to defendant's motion to dismiss into his brief in opposition to defendant's motion for summary judgement. (Br. At 4).

In light of the foregoing, the court concludes that defendant's argument has merit to the extent that plaintiff has not and cannot successfully contest the admission of Ms. Ferguson's will to probate, a will pursuant to the terms of which defendant, as sole primary beneficiary, has obtained, independent of the deeds, a legally cognizable right to all of the property that is subject to the present action independent of the deeds at issue. Thus, the court turns to consider whether, as a result, plaintiff "has no current remedy" and "can no longer benefit from this suit."

In opposition to this aspect of defendant's argument, plaintiff states only that he is entitled to rely upon the allegations of his amended complaint and that such allegations suffice to show that he can benefit from this suit. (See, e.g., Br. At 2). Plaintiff has cited no authority supporting his contention that he may oppose defendant's motion for summary judgement by relying solely upon the allegations of his amended complaint. Given that the motion currently before the court is a motion for summary judgement, the court rejects plaintiff's reliance on the allegations of his amended complaint. See Fed. R. Civ. P. 56; Pub. Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 117 (3d Cir. 1997) (stating that "[p]laintiffs must have standing at all stages of the litigation and they ear the burden of proving it 'with the manner and degree of evidence required at the successive stages of the litigation.'").

Thus, plaintiff has not endeavored to explain how any of the four forms of requested relief would redress his alleged injury or how the court could provide any of the relief that he requests when the terms of Ms. Ferguson's will give defendant a legally cognizable interest in the property

transferred by the deeds.[4] As a result of the foregoing, the court concludes that a decision on the merits of plaintiff's claims will have no impact on the parties and that the admission of Ms. Ferguson's will to probate has forestalled any occasion for meaningful relief that would address plaintiff's alleged injury. As a result, the court will grant defendant's motion.

IV

AND NOW, this 16th day of May, 2000, in accordance with the foregoing, it is hereby ORDERED as follows:

1. The motion of the defendant, Phyllis F. Haney, for summary judgement on the claim asserted against her in the amended complaint of plaintiff, Thomas B. Ferguson, is granted.

2. The complaint of plaintiff is dismissed with prejudice.

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[4] The court notes that plaintiff has not presented any evidence indicating the existence of prior transfers of the property or rents and income derived from the property, evidence relevant to the third and fourth remedies that he has requested. See discussion supra Part I.

3. The Clerk shall mark the case closed.

/s/ William L. Standish
William L. Standish
United States District Judge

cc: Janice Haagensen, Esq.
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

May 11, 2001

No. 00-1682

THOMAS B. FERGUSON,
Appellant
v.
PHYLLIS F. HANEY

United States District Court for the Western District of Pennsylvania (Pittsburgh)
D.C. No. 98-cv-01223

Present: Chief Judge BECKER, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO & FUENTES, Circuit Judges

Motion by Appellant Pursuant to Rule 27 for Oral Argument Regarding The Necessity for Timely Disposition of Appellant's Petition for Rehearing.

/s/ Charlene Crisden
267-299-4923

*Petition for Rehearing was sent on 11/24/00.

ORDER

The foregoing Petition for rehearing filed 11/22/00, and the motion for oral argument regarding the need for disposition filed May 10, 01, are both denied.

/s/ John M. Fuentes
Circuit Judge
Received and Filed
6-5-01, Marcia M. Waldron, Clerk

Date: June 05, 2001
CLC/CS: JJH, JLC